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No. 83-21

IN THE

Supreme Court of the United States

OCTOBER TERM, 1983

AMERICAN TELEPHONE AND TELEGRAPH COMPANY,
Petitioner,

v.

MCI COMMUNICATIONS CORPORATION AND
MCI TELECOMMUNICATIONS CORPORATION,
Respondents.

**On Petition For A Writ Of Certiorari
To The United States Court Of Appeals
For The Seventh Circuit**

BRIEF FOR THE RESPONDENTS IN OPPOSITION

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August 10, 1983

QUESTION PRESENTED

Did the court of appeals correctly analyze the relationship among the factual issues in the case in reaching the conclusion that affirmed jury findings of liability need not be retried?

STATEMENT REQUIRED BY RULE 28.1

Respondents MCI Communications Corporation and MCI Telecommunications Corporation are the petitioners in No. 83-32, and were plaintiffs, appellees and cross-appellants below.

MCI Communications Corporation is the parent corporation of MCI Telecommunications Corporaton. MCI Communications Corporation has no parent corporation. Neither MCI Communications Corporation nor MCI Telecommunications Corporation has any subsidiary which is not wholly owned.

TABLE OF AUTHORITIES

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CASES:

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REASONS FOR DENYING THE WRIT

AT&T's Petition Presents Purely Factual Issues Not Requiring Review By This Court

Both AT&T and MCI seek review of the court of appeals' decision to remand the case for a partial new jury trial on damages, but there the similarity ends.[1] MCI's petition (83-32) presents circuit conflicts whose resolution will guide

[1] Defendant American Telephone and Telegraph Company (petitioner in No. 83-21 and respondent in No. 83-32) is referred to as "AT&T". Plaintiffs MCI Communications Corporation and MCI Telecommunications Corporation (respondents in No. 83-21 and petitioners in No. 83-32) are referred to as "MCI".

future antitrust policy in this country. In contrast, AT&T's petition (83-21) asks this Court to review a lower court's factual determination in a single case.

The issue now raised by AT&T stems from the court of appeals' disposition of arguments in AT&T's petition for rehearing. There, AT&T had argued that the jury's findings on pricing "necessarily tainted" its findings on AT&T's connection practices and that the jury's connection findings were not "sufficiently precise" to be applied by a second jury in a new trial to determine damages. (AT&T Rehearing Petition 11, 14-15.)[2] The court of appeals rejected these arguments, concluding, in language practically identical to that used by AT&T, that the pricing and connection issues were "not necessarily closely linked," that the one issue "did not so clearly taint" the other as to require a full retrial and that the affirmed liability findings "sufficiently identify" the wrongful conduct for a damages retrial. (Op., AT&T App. 241a-42a.) The court of appeals' analysis of the facts is set out in the opinion. (Op., AT&T App. 14a-17a, 18a-20a, 85a-89a, 100a-03a, 108a-15a, 121a-24a, 134a-39a, 153a-56a, 241a.) If the court's factual analysis is correct, so is its decision not to require a full retrial.

AT&T strains to find a legal issue. But the court of appeals did not reject the precedents cited by AT&T. Indeed, the court's language that AT&T says is a departure from precedent—"not necessarily closely linked" and "did not so clearly taint"—mirrors the language AT&T used in seeking rehearing. (Compare AT&T Petition 3, 13, 15 with Op., AT&T App. 155a-56a, 241a-42a and AT&T Rehearing Petition 7, 8, 10-11, 14-15.) AT&T's petition presents no issue deserving this Court's review. *General Talking Pictures Corp.* v. *Western Electric Co.*, 304 U.S. 175, 178 (1938);

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[2] References to the court of appeals' opinion are to the Appendix filed by AT&T with its petition, and appear as "Op., AT&T App.", followed by the relevant page number of AT&T's Appendix.

The court of appeals' opinion is now reported at 708 F.2d 1081.

Southern Power Co. v. *North Carolina Public Service Co.*, 263 U.S. 508, 509 (1924).

CONCLUSION

For the reasons stated, AT&T's petition for certiorari should be denied.

Respectfully submitted,

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